Remarks

To expedite prosecution, the applicants have amended 1 and 2 to recite that the compound binds to ANT and the binding is measured as is the induction of the MPT in a proliferating cell or cell extract as well as non-proliferating cells or a growth quiescent cell or cell extract. Support for "measuring binding" and "measuring the induction of the MPT" can be found, for example, on pages 24 and 25 of the specification.

Rejection of claims 1-5 and 9-23 under 35 U.S.C. § 103(a)

The office has maintained the rejection of claims 1-5 and 9-23 as obvious in view of Costantini, Sawada, and Hogg. For the following reasons, the applicants respectfully traverse.

The essence of the rejection is that Constantini teaches that ANT binding agents induce the MPT and lead to apoptosis amd that it would be obvious to look for such agents for chemotherapeutic use. The Office then relies on Sawada for the proposition that it would have been obvious that an agent that selectively induced the MPT in proliferating (cancer) cells as compared to non-proliferating (normal) cells would be especially useful.

The applicants previously argued that "the results of the presently claimed method could not have been predictable, nor would one of ordinary skill in the art have a reasonable expectation of success at the time the present invention was made because it was unknown at the time that MPT could be selectively induced in proliferating cells compared to non-proliferating or growth quiescent cells".

The Office was unpersuaded by these arguments, responding in the present Office Action that the claims do not require that a compound actually induced the MPT in proliferating cells and not non-proliferating cells.

The claims have been amended herein to recite that the compound selectively induces the MPT in a proliferating cell compared to a non-proliferating cell.

The Office has asserted that it would have been obvious to determine whether a compound binds to ANT and selectively induces the MPT in proliferating cells compared to non-proliferating cells. But this is nothing more than a wish without a reasonable expectation of success. Until the applicants discovered that compounds that bind to ANT and selectively induce the MPT in fact existed, there could have been no reasonable expectation that the presently

claimed methods, which recite binding of the compound to ANT and selective induction of the MPT, would ever be successful. That is, a linchpin of obviousness following *KSR*, i.e., predictability , is absent – without any knowledge or expectation of the existence of compounds that bind to ANT and selectively induce the MPT, the successful application of the presently claimed methods was not predictable.

In view of the foregoing, the applicants submit that claims 1-5 and 9-23 cannot be obvious in view of the combination of Costantini, Sawada, and Hogg.

Conclusion

Reconsideration of this application is respectfully requested and a favorable determination is earnestly solicited. If it is believed that a teleconference will advance prosecution, the examiner is encouraged to contact the undersigned as indicated below.

Respectfully submitted,

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